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# CAPITAL PUNISHMENT AND ITS LEGAL JUSTIFICATION

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## ABSTRACT

The ultimate form of governmental retribution, the death penalty, has long been the subject of discussions about its moral, ethical, and legal grounds. This research paper takes a close look at the legal frameworks, historical background, moral issues, and current discussions surrounding the death penalty. This article explores the intricacies of the death sentence, looking at its legal justifications, ethical conundrums, empirical data, and the changing global scene. It does this by drawing on a wide variety of scholarly literature and legal precedents.

We have been hearing about the death penalty since ancient times; if someone commits a serious crime, they will be executed. The death penalty has the power to stop these kinds of atrocities. The death penalty is often regarded as the worst form of punishment globally. Although it has a long history in India, there is now much debate around its potential abolition.

The Indian Constitution went into effect in 1950, but because India was ruled by the British, the death sentence was widely applied there before to that.

Taking all of this into consideration, the Indian constitution later amended the penalty for various offences, considering the severity of the offence. Previously, the death penalty was stipulated as a five-year sentence for significant offences. However, this is no longer the case; instead, people now believe that the death penalty is a crime against humanity and society at large. Since God has given us life and no one else has the right to take it away from us, the death penalty should be officially recognised as a violation of these fundamental rights. The government should also take action to remove the death penalty's negative effects from the law.

The process of imposing the death penalty takes longer than expected, and while this is happening, the inmates suffer psychologically. As a result, they begin pleading for the death penalty—a condition that no one should have to go through. India's constitution, under Article 21, gives its people the right to life and personal liberty, which cannot be taken away from them. More impoverished individuals are therefore at a higher danger of being punished

by the death penalty. The majority of the impoverished cannot afford a quality attorney for their defence.

**Keywords:** Capital punishment, death penalty, legal justification, ethics, legal frameworks, deterrence, constitutional law, international law.

## **Introduction**

Our civilization is governed by the same laws and regulations, which contribute to its peaceful atmosphere. Every nation has laws and constitutions, and those who disobey them face consequences. Is a crime with a penalty. The severity of the offence determines the penalty. The United States of America, which moved to abolish the death sentence, was the first country to question the constitutionality of the death penalty. The death penalty is known as capital punishment in India. The death sentence is allowed under Section 53 of the Indian Penal Code, 1860. The High Court has the authority to impose the death penalty under Section 368 of the Code of Criminal Procedure. The death sentence is used when major crimes are committed, and the public's collective conscience is so shocked by the crime that it demands the court execute the offenders. They can remain within the purview of grave situations. The idea of substituting life in prison for the death sentence is now being explored. The Supreme Court has ruled time and time again that condemned individuals endure physical and psychological suffering while experiencing hopelessness and despair because of the protracted delay in the death penalty. When the death penalty turns into a more compassionate option, the prisoner's sentence must be commuted to life in prison. When the death penalty turns into a more compassionate option, the prisoner's sentence must be commuted to life in prison. In addition to putting the prisoner and his family through more travel, new research indicates that the death sentence is more effective when the trial of death row inmates is postponed. It is reported that 371 inmates in India were awaiting execution as of the end of December 2017. We are working on a case from 1991, which is 27 years old; in 13 years, only 4 criminals received the death penalty.

**Research question** – Is capital punishment justified or not?

## **Meaning of death penalty**

The death penalty, also referred to as capital punishment, is a legal procedure in which an individual is executed by the state as retribution for a crime they have committed. The Indian Penal Code defines the death sentence 3 under penalties. An execution is the actual act of

murdering someone, whereas a death sentence is the court's decision that someone should be punished in this way. Capital crimes or capital offences are those that carry the possibility of receiving the death sentence. The Latin word capitalis, which meaning "Off the head," is where the word capital originates. It alludes to a punishment that carries the death penalty for a guilty offender.

In India, the death sentence, often known as the capital punishment, is only applied to the very rarest of offences. The Indian Penal Code 1860 (IPC) offers the death penalty and life in prison as an alternative punishment for the following offences: waging war against the Government of India, trying to do so, or aiding and abetting such an act. However, there cannot be a strict rule or definition for the same, encouraging a military soldier to revolt, creating false evidence that results in an innocent person's guilt and death murdering someone, encouraging the suicide of a minor, someone who is crazy or inebriated, someone who is facing a life term in jail if they inflict harm, and someone who commits dacoity together with murder. Based on "vicarious" culpability, the IPC further stipulates that act committed in support of a common purpose or goal, abetment, criminal conspiracy, and dacoity with murder can result in the death penalty.

Capital punishment, sometimes known as the death penalty, is the state-sanctioned execution of an individual for a crime. This ultimate form of punishment has a long and complex history, deeply rooted in legal, ethical, and cultural considerations. The crimes for which capital punishment is applied typically include serious offenses such as murder, treason, espionage, and, in some jurisdictions, acts like drug trafficking.

The methods of execution have varied throughout history, ranging from hanging and firing squads to more modern methods like lethal injection and electrocution. The imposition of the death penalty often involves a thorough legal process, including a trial, sentencing, and appeals, to ensure the accused receives due process.

## History of Capital Punishment

### Ancient Civilizations:

- **Mesopotamia:** One of the earliest known codes of law, the Code of Ur-Nammu (circa 2100-2050 BCE), included provisions for the death penalty.
- **Hammurabi's Code:** The death sentence was mandated by the Code of Hammurabi

(about 1754 BCE) for a variety of offences in ancient Babylon.

### **Ancient Greece and Rome:**

- **Greece:** Capital punishment was widely used in ancient Greece, with methods including stoning and hanging. Philosophers like Plato and Aristotle debated the ethical aspects of the death penalty.
- **Rome:** The Roman Republic and Empire employed various forms of execution, including crucifixion. The Twelve Tables, a foundational legal code in ancient Rome, included provisions for the death penalty.

### **Evolution Of Capital Punishment in India**

Upon independence in 1947, India maintained the 1861 Penal Code, which included the death penalty for murder. During the 1947-1949 formulation of the Indian Constitution, some members of the Constituent Assembly advocated for the abolition of the death penalty, but it was not included. Over the next two decades, private members submitted legislation in both chambers of parliament to abolish the death penalty, but none were successful. Between 1950 and 1980, there were an estimated 3000 to 4000 executions. Quantifying the number of persons condemned to death and executed between 1980 and the mid-1990s remains challenging. Each year, around two or three persons are hung.

### **Enlightenment Era on capital punishment**

During the Enlightenment Era, which spanned roughly from the late 17th to the late 18th century, there was significant debate and discussion regarding various aspects of society, including the use of capital punishment.

Enlightenment thinkers often questioned traditional practices and sought to apply reason and rationality to societal issues, including the justice system. Some philosophers, such as Cesare Beccaria, were particularly influential in challenging the use of capital punishment.

Beccaria's work, "On Crimes and Punishments" (1764), argued against the use of torture and capital punishment. He believed that punishments should be proportionate to the crime, and he argued that the death penalty was neither effective as a deterrent nor justifiable in terms of its

impact on society. Beccaria advocated for the reform of the justice system to focus on rehabilitation and prevention rather than solely punishment.

Other Enlightenment thinkers, such as Voltaire and Montesquieu, also criticized the arbitrary and cruel aspects of capital punishment, though they did not necessarily advocate for its abolition outright.

Overall, the Enlightenment Era saw a shift in attitudes towards capital punishment, with many intellectuals questioning its efficacy and morality. While capital punishment persisted in many places during this time, these debates laid the groundwork for future reforms and movements towards its eventual abolition in some societies.

### **Capital Punishment is justified or not!**

The laws that are in place in India allow for a reforming perspective on punishment. This view holds that the goal of punishment should be the offender's reform via the individualization process. It is predicated on the humanistic idea that a criminal does not automatically lose his humanity. The judge should consider several considerations before imposing punishment, including the offender's age and character, early upbringing, education, and surroundings, the circumstances surrounding the offence, the object used in the offence, and other elements. The purpose of this is to familiarise the judge with the specifics of the case so that he can impose a sentence that is appropriate for the situation.

In severe circumstances, the death sentence is the last kind of punishment meted out to the prisoner. We can therefore conclude that the death penalty is the judiciary's last option when it comes to cases where the judge's assessment of the facts and their distaste for the nature and/or mode of operation of the crime led them to declare the murder to be "brutal," "cold-blooded," "deliberate," "unprovoked," "fatal," "gruesome," "wicked," "callous," "heinous," or "violent."

A guilty individual would not always need to get the death sentence; instead, the facts must be carefully considered before a decision is made to ensure that the severity of the punishment is appropriate for the seriousness of the offence. The Supreme Court of India's Justices A.S. Anand and N.P. Singh said in the Dhananjay Chatterjee case that the victim's defenceless and unprotected status, the criminal's behaviour, and the heinousness of the act must all be taken into consideration while determining the appropriate sentence. The way the courts respond to

society's call for justice against the criminals is by imposing the proper penalty. In order for the courts to reflect the public's disgust with the crime, justice requires that they administer punishment appropriate for the offence.

Japanese psychologists have offered a novel defence of the death penalty, arguing that it plays a significant psychological role in the lives of Japanese people, who experience extreme stress and pressure at work. They contend that the death penalty perpetuates the idea that bad things happen to people who deserve it. This supports the opposing viewpoint, according to which "good" people will always experience positive things. The prospect of a reward in due course serves as a psychological respite from conformity and overwork, and this is how the existence of the death penalty helps.

In summary, everyone who commits a crime deserves to be punished, and only those who are found guilty should receive punishment commensurate with the seriousness of their offence. As was previously mentioned, only the most heinous crimes are eligible for the death penalty in India. As a result, the morality of not enforcing the death penalty is ambiguous, as some crimes are simply inhumane and should also receive severe punishment. Common examples of such crimes include hate crimes, and a recent ruling following the Kathua rape case held that rape of a child under the age of twelve is eligible for the death penalty because it falls under the category of inhumane crimes.

### **Need of new law to govern capital punishment.**

The "Death Penalty in India Annual Statistics Report" revealed that, in the 27 years from 1991 to 2017, just 4 out of 371 convicts on death row have been executed, demonstrating how far from regulated the death penalty has been in our nation. Until they are hanged or granted a pardon, which seldom ever occurs, the remaining 367 inmates have been placed in solitary confinement and will remain there. Both the torture and the violation of those detainees' right to life are occurring here. When questioned about the execution, the courts, however, frequently use the delay as a mitigating circumstance to justify it. The Supreme Court's handling of a death sentence delay as a mitigating circumstance has been ambiguous and inconsistent in its efforts to uphold the purported "ends of justice." Though there isn't even the faintest hint of what qualifies as a "prolonged" delay, which may work in favour of a condemned prisoner and give the court the ability to decide between a convict's "life" and "death." The court has complete

discretion over what delays qualify as "prolonged" delays and how they function as mitigating factors.

A Division Bench of the Supreme Court, made up of Justices O. Chinnappa Reddy and R.B. Misra, was asked to consider whether postponing the execution of a death sentence violates the constitutional guarantee stated in Article 21 of the Constitution, allowing the person serving the sentence to argue that they should be given a life sentence instead of the death penalty. This case was *T. V. Vatheeswaran v. State of Tamil Nadu* 19. Speaking on behalf of the Division Bench, Chinnappa Reddy, J. first reviewed the attitudes of Indian and international judges towards delays in executing death sentences. Next, he examined the constitutional ramifications of dehumanising factors associated with protracted delays in carrying out death sentences. In doing so, he concluded that protracted delays in carrying out death sentences are inhumane, unjust, unfair, and unreasonable, and that doing so violates the constitutional guarantee found in article 21 by depriving someone of their life in an unjust, unfair, and unreasonable manner. According to him, a just, equitable, and rational process goes beyond simply pronouncing a sentence and includes carrying it out. Chinnappa Reddy J. further emphasised that prolonged detention awaiting the execution of a death sentence is unjust, unfair, and unreasonable, and that the only way to undo the "wrong" is to quash earlier Supreme Court judicial pronouncements implying the right to a speedy trial as an integral part of the fundamental right guaranteed in article 21. He mainly relies on the minority judgement of Privy Council members Lord Scarman and Lord Brightman, who said in *Noel Riley v. A.G. of Jamaica* 20 that a protracted death sentence is cruel and humiliating since it results from circumstances beyond the convicted man's control.

It is necessary to enact new legislation governing death sentences to guarantee that offenders get just punishment and are not robbed of their life. The length of time a prisoner should be held after the last appeal for his execution should be regulated by legislation. All of this is sufficient to realise that new legislation is required in order to regulate death punishments. The new legislation must control sentence execution in order for justice to be declared to have been served really, rather than merely factually.

### **Some important cases on Capital Punishment**

**EDIGA ANAMMA VS. STATE OF ANDHRA PRADESH** - It was decided that in addition to looking into the relevant aspects of the wrongdoing and deciding based on the level of

brutality committed, the judge should also look into the criminal's circumstances or negligence while committing the wrongdoing.

Punjab State v. Bachan Singh- It has been decided that this case brings up the validity of the death penalty once more. This was the circumstance that gave rise to the most unusual of situations, and the principle continues to stand out among the most important examples.

Keeping in mind the ultimate objective to further establish the rarest of unusual occasions that the conditions when the application of the death penalty might be legitimised, the case of Machh Singh v. State of Punjab was decided.

STATE OF MAHARASHTRA VS. SHUKHDEO SINGH: The judges sentenced the persons responsible for the general vaidya murder to death.

### **Literature Review**

For decades, there has been a heated discussion about the morality, efficacy, and constitutionality of the death sentence, often known as the capital punishment. The purpose of this study of the literature is to give a thorough overview of academic publications that discuss different facets of the death penalty and the arguments made in favour of keeping it in place or abolishing it.

I have gone through various articles and various already published research paper for the better understanding of the capital punishment and whether it is justifiable or not. Done various online surveys from sites- Ipleaders, SCC, Lawsikho and various other sites for the better understanding for the capital punishment in today's time. There is a wealth of information accessible on the death penalty. In order to determine the work that has been done on this concept thus far by various Scholars, the literature review is evaluated in this manner.

- The death sentence should only be applied in cases of extreme severity, according to Article 6 of the International Covenant on Civil and Political Rights, 1979. However, only a small number of governments abolished the death penalty before 1954. In 1984, the ECOSOC declared that the death penalty should not have severe repercussions.
- One person who opposed the death sentence was Mahatma Gandhi, who thought that the only appropriate course of action was ahimsa. He prayed to Hate Sin, but not to the Sinner.



- Dr. Ambhedkar thought that it was morally required to follow the nonviolent ideals.
- Retributive and deterrent theories are the foundation of the death penalty doctrine, which is predicated on the rarest of rare situations. The retributive approach is based on the idea that an eye for an eye and a tooth for a tooth is how one should punish an offender in order to instill dread in him and prevent him from doing the same act in the future.
- The death penalty is permitted under several Indian laws, including the Indian Penal Code (1860) (Sections 120–B, 121–132, 302, 303, 305, 364 A, 376 AB, etc.); the Commission of Sati Act (1987–1985); the Protection of Children from Sexual Harassment Act (2012); and the Criminal Law Amendment Act (2013), among others.
- The 187th Report of the Law Commission examined how capital punishment is carried out, but it made no mention of whether the death penalty is constitutional. The Law Commission recommended that the death penalty be eliminated and limited to situations involving terrorism and waging war against the State in its 262nd report on the subject.
- In his work, Dr. S. Murlidhar analyses the test that has been used to determine death sentence and asserts that understanding the limitations of the legal system and the significance of retributive theory in bringing about the influence of peace and non-violence are essential.

## **Suggestion**

The death penalty, also known as the capital punishment, is still a divisive topic in society today. Arguments against it centre on its morality, deterrent power, and likelihood for erroneous convictions. Advocates claim that it serves as a deterrent to violent crimes and that it provides victims and their families with some kind of justice. They frequently point to the seriousness of some crimes—like planned murder or acts of terrorism—as justification for the worst penalties society can administer.

Opponents of the death penalty, however, bring up several moral, legal, and practical issues. They contend that it is intrinsically irreversible, infringes against the right to life, and runs the danger of killing innocent people because of weaknesses in the judicial system. Furthermore, research has questioned its deterrent power, arguing that other elements including mental health

and socioeconomic circumstances are more important in preventing crime.

Legally speaking, the basis for the death penalty differs based on the legal system and cultural setting. While some legal systems emphasise the concepts of rehabilitation and reintegration into society, others see it as a fair reaction to exceptionally severe offences. As a violation of the right to life and dignity, international human rights norms are pushing for its outlawing.

In the end, the argument in favour of the death penalty reflects larger cultural values, such as attitudes towards justice, retribution, and the government's role in combating crime. Because of this, it is still a complicated and highly contentious topic that must have its ethical, legal, and practical ramifications carefully considered.

The potential for reform is the primary justification for choosing a punishment other than the death sentence. After serving time in jail and having their freedom severely restricted, most offenders aside from ardent criminals or history sheeters repent. This may be determined by looking at how the criminal acts in jail and how he feels about other prisoners and the guards there.

Life in jail: Life in prison is a useful substitute for the death penalty. This involves keeping a prisoner imprisoned without the chance of release—that is, without parole—until their natural death. This is referred to as life without parole (LWP) at times. In a similar vein, life in jail with the potential of release is an option. The most severe punishment available, life in prison, has been justified on the grounds of deterrent, retaliation, restoration, and incapacitation (preventing the criminal from committing new crimes for the sake of public safety).

Even life in prison, however, is frequently an excessively harsh punishment, particularly for nonviolent offences, and therefore violates the proportionality principle. LWOP highlights concerns about inhumane, harsh, and humiliating punishment and violates the right to human dignity by removing the possibility of rehabilitation.

Because LWOP violates the inalienable right to life, it also draws criticism comparable to that of the death sentence. Another kind of death sentence is to lock someone up and deny them any chance of freedom. Inmates are only allowed to depart when they pass away. LWOP disregards the offender's basic human dignity.

**Long-term Imprisonment:** An alternative to life in prison is a lengthy sentence for a predetermined period, such as 40 years in Croatia, during which the prisoner may be freed with or without additional conditions (such having to report to the police on a regular basis). There are no life sentences in Brazil, Colombia, Croatia, El Salvador, Nicaragua, Norway, Portugal, or Venezuela. On the other hand, inmates in these nations may be serving lengthy jail terms—sentences that in certain cases even surpass the minimal durations required for life sentences.

The death sentence, also referred to as the capital punishment, is a contentious topic with compelling arguments on both sides. There are two main types of suggestions for the application or modification of capital penalty laws: those who support its usage under certain circumstances or those that argue against its abolition.

**Proposal for the Application of the Death Penalty:** Only the most heinous crimes, such as acts of terrorism, mass killings, or extremely cruel homicides, when the accused's guilt has been proven beyond a reasonable doubt, should be eligible for the death penalty.

### **Legal Justification-**

**Deterrence:** The alleged deterrent impact of the death penalty is one of the most often mentioned legal defences for it. The idea behind the death sentence is that those who might otherwise commit capital crimes are deterred by its severe nature.

**Retribution:** According to this defence, the death penalty is ethically acceptable when applied in retributive cases. Considering the gravity of their acts, supporters contend that it is just that individuals who have committed the most heinous crimes should get the worst punishment possible.

**Irreversibility of Crime:** Some think that crimes involving the taking of life should be punished more severely since the act is irreversible. According to this perspective, the death sentence is a means of balancing the legal system in cases where a life has been unfairly taken.

Several variables, such as legal precepts, cultural norms, ethical concerns, and scientific data on the efficacy and effects of the death penalty, must be taken into account when recommending the continuation, modification, or elimination of the death penalty. Any legal recommendation must also take into account the human rights environment, international legal norms, the nation in question's particular legal system, and prior court decisions.

## **Conclusion**

The debate over capital punishment is one that intertwines legal, moral, and practical considerations, making it one of the most contentious issues in public policy and law. Those who argue in Favor of capital punishment often do so on the grounds of deterrence, retribution, and the irreversibility of certain crimes, asserting that the death penalty serves as a potent tool to prevent the most grievous crimes and ensure justice is served in a proportionate manner. Legal justification here hinges on the belief that certain acts are so heinous that they warrant the ultimate punishment, and that this can be administered in a manner that is both just and effective.

Conversely, arguments against capital punishment often emphasize the principles of human rights, the potential for irreversible miscarriages of justice, the lack of a proven deterrent effect, and the economic burden of implementing a death penalty system. These concerns are supported by international movements towards the abolition of the death penalty, backed by interpretations of international human rights treaties which suggest a trend towards ending capital punishment.

Legally, the justifiability of capital punishment varies significantly by jurisdiction, reflecting broader societal values and legal principles. In jurisdictions where it is permitted, the emphasis is typically on ensuring rigorous safeguards and due process to minimize the risk of executing the innocent and to uphold the principles of justice and fairness. In jurisdictions moving away from or that have abolished the death penalty, the emphasis is on upholding human dignity and adapting the justice system to work effectively without it.

Ultimately, the decision to retain, reform, or abolish capital punishment involves a complex balancing of ethical, legal, and practical factors, each deeply influenced by cultural, societal, and historical contexts. Legal justifications on both sides of the debate need to address not only the immediate implications for crime and punishment but also broader considerations of justice, equity, and human rights. The trend in many parts of the world is increasingly leaning towards abolition, reflecting a growing consensus that capital punishment may not be compatible with contemporary understandings of human rights and justice.

India has long used lethal punishment, often known as the death penalty. The death sentence has been India's most popular punishment for crimes and transgressions that basically break

the law from the days of the monarchy. There was no such thing as grave or significant offences that could have you put to death. These days, before the death sentence is applied, factors like "rarest of rare cases," "special reasons," "grievous crimes," "serious offences," etc. are considered.